

STATE APPEAL BOARD

In Re:	City of Indianola)	Order
	Budget Amendment Appeal)	
	FY2022)	September 7, 2021

BEFORE THE DIRECTOR OF THE INTERIM DEPARTMENT OF MANAGEMENT, JOEL ANDERSON; STATE AUDITOR ROB SAND; AND STATE TREASURER MICHAEL L. FITZGERALD.

A hearing on the above captioned matter was held pursuant to the provisions of Section 384.19 and Chapter 24 of the Code of Iowa on August 11, 2021. The hearing was before a panel consisting of Mr. Kyle Harms, Investment Officer, Office of the State Treasurer; Ms. Carrie Johnson, Property Valuation and County Budget Administrator, Department of Management and presiding Hearing Officer; Ted Nellesen, City Budget Administrator, Department of Management; and Ms. Lesley Geary, Manager, Office of the State Auditor.

The spokespeople for the petitioners were Mr. Alan Ostergren, President and Chief Counsel, The Kirkwood Institute; and Mr. Kelly Shaw, citizen. The spokespeople for the City of Indianola ("City") were Mr. Doug Fulton, City Attorney; and John Parker Jr, Council Member. The Indianola Chamber of Commerce and several citizens made comment during the hearing.

Upon consideration of relevant laws contained in the Iowa Code, the specific objections raised by the petitioners, the testimony presented to the hearing panel at the public hearing, the additional information submitted to the hearing panel both before and after the hearing, and after a public meeting to consider the matter, the State Appeal Board ("the Board") has voted to sustain the City of Indianola fiscal year (FY) 2022 budget amendment as described herein.

PROCEDURAL HISTORY

The FY2022 City of Indianola proposed amended budget summary was published in the Indianola Record Herald on June 23, 2021. The budget amendment was adopted at a public meeting held on July 6, 2021.

A petition protesting the certified FY2022 City of Indianola budget amendment was filed with the Warren County Auditor on July 15, 2021 and was received by the Board on July 16, 2021. The petitioners' objections and their reasons listed on the petition document are as follows:

- An objection to the city council transferring \$2,667,910 from the Local Option Sales Tax ("LOST") fund to pay for expenditures related to the ongoing City Square Reconstruction Project into the FY2022 budget. The objection stems from the protestors contention that the expenditures of the City Square Reconstruction Project are not allowable under the LOST allowable purpose statement, which was approved by voters in March 2016.

DISCUSSION

CITY OF INDIANOLA RESPONSE

City of Indianola City Attorney Doug Fulton and City Councilman John Parker Jr. acted as spokespersons for the City. In the presentation, City Attorney Fulton provided comments in regard to the Indianola budget amendment, summarized below:

- The issue in the case is not whether it is wise or acceptable to make these expenditures, but whether it is legal. The City believes that the expenditures are legal.
- The LOST resolutions passed to put the LOST referendum on the ballot outlined the allowable uses as public safety, public works and street maintenance.
- Planned City Square Reconstruction Project was created through processes over time involving master planning with in the community and through analysis by outside entities such as the Iowa Economic Development Authority.
- The water main improvements being done are a matter of public safety and were requested by the City Fire Chief.
- City believes that all of the proposed improvements, including ornamentation and landscaping are public works, and would therefore be an allowable use of LOST.
- Many beautifying improvements also improve public safety, such as sidewalk widening.
- City engineering consultants, Bolton & Menk, categorize all of these improvements as public works.
- The project moved forward with only one bidder due to a need to time the project with another major county improvement project. This would ensure that the square would be shut down only once, not twice.
- The LOST revenues have provided more than the amount necessary to maintain the wastewater treatment plant costs by more than 25% over the last year.

In the presentation, City Councilman Parker provided comments in regard to the Indianola budget amendment, summarized below:

- The wording of the LOST referendum was left open to more than just the wastewater plant and no sunset was used intentionally, as the Council at the time knew the need to fund future projects would emerge.
- The original projection for LOST revenue was \$800,000 per year. The LOST is now providing over \$1,000,000 to wastewater and still has leftover dollars.
- Infrastructure improvements were necessary for public safety, as a business was unable to put in a proper fire suppression system due to insufficient water pressure.
- The use of LOST to fund portions of this project were a better alternative than raising property taxes.
- The City Square Reconstruction Project was too important and necessary to put off longer.

in the budget of the previous year and which the objectors propose should be reduced or excluded; but the burden shall be upon the certifying board or the levying board, as the case may be, to show that any new item in the budget, or any increase in any item in the budget, is necessary, reasonable, and in the interest of the public welfare.”

5. Projects and improvements undertaken by a city that are to be considered public works are not defined in the Iowa Code. A public improvement is defined under Code of Iowa Section 26.2 as “means a building or construction work that is constructed under the control of a governmental entity and for which either of the following applies: (1) Has been paid for in whole or in part with funds of the governmental entity. (2) A commitment has been made prior to construction by the governmental entity to pay for the building or construction work in whole or in part with funds of the governmental entity.”
6. Iowa Code section 384.18 states in part, “ A city budget for the current fiscal year may be amended for any of the following purposes:
 - a. To permit the appropriation and expenditure of unexpended, unencumbered cash balances on hand at the end of the preceding fiscal year which had not been anticipated in the budget.
 - b. To permit the appropriation and expenditure of amounts anticipated to be available from sources other than property taxation, and which had not been anticipated in the budget.
 - c. To permit transfers from the debt service fund, the capital improvements reserve fund, the emergency fund, or other funds established by state law, to any other city fund, unless specifically prohibited by state law.

FINDINGS OF FACT

1. The City of Indianola certified a budget amendment which resulted in a \$8,586,945 increase to the total expenditures and other uses of the City during FY2022. The certified budget amendment also included \$3,767,910 of increased revenue and other sources during FY2022. This amendment included interfund transfers of \$2,667,910.
2. Code of Iowa 423B.1(5)(b) states that a LOST referendum “...shall also specify the approximate amount of local option tax revenues that will be used for property tax relief, subject to the requirement of section 423B.7, subsection 7, paragraph “b”, and shall contain a statement as to the specific purpose or purposes for which the revenues shall otherwise be expended.”
3. LOST referendum was put on the ballot via a resolution of the City Council on September 21, 2015. The resolution contained the allowable purpose to be put on the ballot as “100% to cost related to the construction and/or rehabilitation of public safety facilities, public works and street maintenance”.

petitioners contend that this view of these improvements puts the improvements outside of what is considered public work.


The Board finds that the City has met their burden of proof on this point. No direct definition of what is to be considered a public work is evident in the Iowa Code. The Iowa Code does supply a definition for the analogous term of public improvement in section 26.2. Using this definition covers the types of projects and improvements objected to by the petitioners. A common definition for public work can be found in the Merriam-Webster Dictionary as "works (such as schools, highways, docks) constructed for public use or enjoyment especially when financed and owned by the government." Using this common definition, the objected to projects also qualify as public work.

3. The City of Indianola has the burden to prove that the amended expenditures are necessary, reasonable, and in the interest of public welfare. The Board finds that the City Square Reconstruction Project includes improvements which are necessary and reasonable. All changes included in the project have been properly researched and considered by the City, and appear to be in the interest of public welfare.

ORDER

Based on the information provided by the parties involved and the Iowa Code, the State Appeal Board sustains the City of Indianola's FY2022 budget amendment.

STATE APPEAL BOARD


Michael L. Fitzgerald
Chairperson


Joel Anderson
Member

APPROVED VIA CALL-IN (PHONE)
Rob Sand
Vice Chairperson

9/7/2021
Date